International Covenant on Civil and Political Rights

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Human Rights Committee

List of issues in relation to the second periodic report of Malta*

Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. With reference to the Committee's previous concluding observations (CCPR/C/79/Add. 29, paras. 7, 8, 9 and 12) and the information provided in the State party's periodic report (CCPR/C/MLT/2, para. 453), please clarify the status of the Covenant within the domestic legal system and indicate whether Covenant rights are incorporated into domestic law and can be invoked before and given effect to by domestic courts.

2. With reference to the Committee's previous concluding observations (CCPR/C/79/Add. 29, paras. 10 and 13), please clarify the State party's position with regard to its reservations to the Covenant and indicate the measures taken to review the need to maintain its reservations, in particular those concerning articles 13 and 14.

3. Please provide information on the progress made in establishing a national human rights institution in accordance with the Paris Principles.

Non-discrimination, equality between men and women (arts. 2, 3 and 26)

4. Please indicate whether the State party has taken any steps to amend its anti-discrimination legal framework to include language and religion as prohibited grounds of discrimination. Please provide information on the status of bill No. 18, aimed at amending the antidiscrimination provision in the Constitution by adding sexual orientation to the list of prohibited grounds.

5. Please indicate how the provisions of the law (article 9 of the Criminal Injuries Compensation Scheme Regulations, Legal Notice 186 of 2012) which provide that the only victims of crime who may apply for compensation before a criminal court are Maltese, European Union nationals or habitual residents of Malta are consistent with the non-discrimination principle and the State party's obligations under article 26 of the Covenant.

6. Please provide information on specific measures taken to combat manifestations of racism and xenophobia, including racially motivated violence and racial discrimination in access to housing and accommodation, places of entertainment and public transport, and to

* Adopted by the Committee at its 110th session (10–28 March 2014).

ensure that such cases are investigated effectively and those responsible appropriately sanctioned. Please report on the status of the amendments to the Criminal Code proposing the exclusion of national origin and citizenship as grounds under which racist conduct is prohibited. Please also clarify whether the National Action Plan against Racism and Xenophobia developed by the National Commission for the Promotion of Equality has been formally adopted and is being used by the authorities.

7. Please give details of measures taken to combat bullying and harassment suffered by lesbian, gay, bisexual and transgender students in educational settings. Please also report on measures taken to address the practical difficulties faced by transgender children in integrating in State schools given that secondary State schools are sex-separated.

8. Please give details of measures taken to enhance the representation of women in political and public life, including the parliament, executive bodies and the judiciary, and to increase the representation of women in decision-making positions.

Violence against women and children, including domestic violence (arts. 7 and 23)

9. Please report on measures taken, and the impact thereof, to address violence against women, including sexual and domestic violence, and child abuse, including child sexual abuse, as well as underreporting of such violations. Please provide information on: (a) the number of such cases recorded, on an annual basis; (b) investigations carried out; (c) sanctions imposed; (d) remedies provided to victims. Please also clarify whether the State party plans to review the definition of rape with a view to recognizing the lack of consent as a determining factor.

Right to life, prohibition of torture and cruel, inhuman or degrading treatment, right to liberty and security and the treatment of persons deprived of their liberty, including conditions of detention, rights of migrants, refugees and asylum seekers (arts. 6, 7, 8, 9 and 10)

10. Please provide information on the investigation into the excessive use of force by police officers and soldiers during the August 2011 disturbances at Safi Barracks Detention Centre. Please also report on the investigations into the death in custody of two migrants of Nigerian and Malian origin, in 2011 and 2012.

11. Please indicate whether the State party plans to review its legislation on abortion with a view to providing for exceptions to the absolute ban on abortion, such as protection of life and health of the mother, and pregnancy resulting from rape or incest.

12. Please provide information on the outcome of the proceedings instituted against four prison officers charged with ill-treatment of a Dutch prisoner in 2008. Please comment on two cases of collective expulsion and breaches of the non-refoulement principle in 2010 when migrants intercepted at sea were taken to Libya and on the planned collective expulsion of a group of 102 people to Libya in July 2013. Please provide information on measures taken to prevent collective expulsions and violations of the non-refoulement principle in practice, and to ensure that migrants are provided with an individual assessment of their situation before removal. Please also give details of existing remedies against such violations.

13. Please clarify how the notion of "reasonable chastisement" is defined and interpreted in the legal system and report on measures taken to explicitly prohibit corporal punishment in the home and in alternative care settings.

14. Please indicate whether the State party is considering amending its legislative and policy framework for the detention of irregular migrants, asylum seekers included, with a view to: (a) abolishing the system of mandatory detention and ensuring that detention is a

measure of last resort and is justified as reasonable, necessary and proportionate in the light of the circumstances; (b) providing non-custodial alternatives to detention and ensuring that the bail system already in place is effective and accessible in practice to asylum seekers; (c) establishing a time limit for the detention of asylum seekers under law; (d) providing for effective judicial remedy to challenge the lawfulness of detention; and (e) providing free legal aid to asylum seekers from the outset of the asylum procedure.

15. Please report on measures taken to ensure that the vulnerability and age assessment procedures in respect of vulnerable irregular migrants, including unaccompanied migrant children, are conducted promptly and that, pending age assessment, unaccompanied migrant children are not detained together with adults. Please also indicate (a) whether there are any mechanisms in place to appeal the outcome of vulnerability and age assessments; (b) whether unaccompanied migrant children receive adequate free legal representation and psychosocial care.

16. Please provide information on measures taken to: (a) address the overcrowding and poor conditions of detention, including inadequate sanitary conditions, health-care services and recreational and training opportunities, in the Corradino Correctional Facility and in the Lyster and Safi Barracks Detention Centres; (b) ensure adequate standards of housing and living conditions in the open centres accommodating asylum seekers and in the Forensic and Irregular Migrants' Wards at the Mount Carmel Hospital. Please also clarify whether (i) sentenced prisoners are segregated from remand prisoners and long-term prisoners from those serving short prison terms; (ii) detainees at Lyster Detention Centre are allowed to receive regular visits; (iii) legal safeguards are available for immigration detainees subject to disciplinary sanctions.

Elimination of slavery and servitude, forced labour (art. 8)

17. Please report on measures taken to prevent and combat trafficking in women and children for purposes of sexual exploitation, including the steps taken: (a) to improve the identification of victims of trafficking and to implement a formal victim referral mechanism; (b) to investigate promptly and effectively such cases, prosecute and sanction perpetrators and ensure victims' access to effective remedies, including compensation and rehabilitation. Please provide statistics on: (i) the number of cases of trafficking; (ii) the investigations and prosecutions initiated and actual criminal convictions; (iii) the remedies awarded to victims. Please also respond to reports of labour exploitation of refugees, persons granted humanitarian protection and immigrants employed in the informal sector and outline the steps taken to address this issue.

Right to a fair trial, independence of the judiciary and juvenile justice (arts. 14 and 23)

18. Please provide information on the reform of the justice system and the progress achieved. Please respond to concerns regarding the independence and impartiality of the Refugee Appeals Board, which has the status of a judicial authority.

19. Please provide information on the status of the amendments to the Criminal Code aimed at increasing the age of criminal responsibility of minors from 9 to 14 years. Please report on measures taken to remove the assumption contained in the Criminal Code that a juvenile between the age of 9 and 14 years could act with "mischievous discretion" and to ensure that juvenile offenders between 16 and 18 years of age, including those co-accused with adults, are not excluded from the juvenile justice system.

20. Please report on measures taken to amend legislative provisions limiting the right of persons deprived of liberty to have access to a lawyer, such as the prohibition against a

lawyer being present during police questioning and the delaying of access to a lawyer for a period of up to 36 hours in a number of circumstances.

Right to privacy, marriage and family life (art. 17)

21. Please provide information on the status of the Civil Union Bill. Please comment on information that the Public Registry refused to allow migrants who have not qualified for refugee status or subsidiary protection to get married.

22. Please comment on information that blind persons and persons with visual impairments are obliged to vote verbally in front of a group of people representing political parties and the electoral commissions and explain how this is compatible with the State party's obligations under articles 17 and 25.

Freedom of expression, freedom of conscience and religious belief (arts. 18 and 19)

23. Please indicate whether the State party plans to decriminalize defamation and provide for a definition of libel or defamation. Please also clarify how the laws against "vilification" of or "giving offence" to the Roman Catholic Church and other faiths are compatible with the State party's obligations under article 19 as interpreted in the Committee's general comment No. 34 (2011) on freedoms of opinion and expression.

Children's rights (arts. 23 and 24)

24. Please indicate whether the State party has taken measures (a) to provide for sufficient family-based care for children deprived of a family environment; (c) to raise the minimum age of marriage.

Dissemination of information relating to the Covenant (art. 2)

25. Please provide information on the steps taken to disseminate information on the Covenant and its first Optional Protocol, the submission of the second periodic report of the State party and its forthcoming examination by the Committee. Please also provide more information on the involvement of civil society, non-governmental organizations, and specialized bodies such as the National Commission for the Promotion of Equality (NCPE) and the Office of the Ombudsman in the preparatory process for the report.